MINUTES
HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, NOVEMBER 10, 2009
HUNTINGTON BEACH CIVIC CENTER
2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

5:15 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: *P Speaker, P Mantini, P Farley, P Shier Burnett, P Scandura, P Livengood, P Delgleize*

AGENDA APPROVAL

A MOTION WAS MADE BY SCANDURA, SECONDED BY LIVENGOOD, TO APPROVE THE PLANNING COMMISSION STUDY SESSION AGENDA OF NOVEMBER 10, 2009, BY THE FOLLOWING VOTE:

AYES: Speaker, Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize
NOES: None
ABSTAIN: None
ABSENT: None

MOTION APPROVED

A. PROJECT REVIEW (FUTURE AGENDA ITEMS)

A-1. ENVIRONMENTAL IMPACT REPORT NO. 08-008/GENERAL PLAN AMENDMENT NO. 08-002/ZONING MAP AMENDMENT NO. 08-002/ZONING TEXT AMENDMENT NO. 08-002 (BEACH AND EDINGER CORRIDORS SPECIFIC PLAN – REVIEW OF ENVIRONMENTAL IMPACT REPORT) – Rosemary Medel, Associate Planner

Rosemary Medel, Associate Planner, gave a brief overview of the proposed project. PBS&J Consultants Carrie Garlett and Ruda Thomas gave a detailed overview of the Environmental Impact Report (EIR).

Vice-Chair Farley noted that the historic and cultural resources section focuses on buildings that are 45 years old or older. He asked staff what measures protect buildings that are younger than 45 years, but are still listed by the city as a historic and/or cultural resource. Mary Beth Broeren, Planning Manager, stated that those buildings would be protected through provisions in the General Plan.

Vice-Chair Farley asked staff if the Specific Plan included a preference for grading up pad height along Beach Boulevard. Ms. Broeren stated that there is

not a preference stated for grading up, but that sites are required to have positive drainage which may call for variation in grades.

Vice-Chair Farley asked if a new transit project in this specific plan area would tier off from this EIR. Ms. Broeren stated that it would not. She noted that the EIR does include circulation improvements, but that a new transit project is not a part of the Specific Plan at this time.

Commissioner Scandura noted that some of the circulation mitigation measures address streets outside of the City of Huntington Beach, which would require approval from those cities as well as CalTrans. He also noted that some of those measures require the widening of Beach Boulevard in areas where widening would not be easily accomplished. He asked staff how those mitigation measures would be implemented and if they are feasible. Bob Stachelski, Transportation Manager, acknowledged that widening Beach Boulevard would require significant right-of-way acquisitions but that it is not unfeasible. Commissioner Scandura asked if the circulation impact could be mitigated without widening Beach Boulevard and Mr. Stachelski stated that it could not.

Commissioner Livengood expressed concern that fair share contributions would not adequately mitigate the impacts of projects in the Specific Plan area. He suggested that staff consider a trigger that forces a development to be placed on hold until the property infrastructure and services can be provided. Ms. Broeren stated the city has several options to guarantee that the proper infrastructure is in place prior to a development and can require a development to make those improvements prior to construction. Mr. Stachelski noted that the mitigation measures have horizon years where it is predicted they will become needed and noted that some developments would occur several years before those measures would be needed. He stated that fair share contributions are in place in order to accommodate those measures. Commissioner Speaker expressed concern at the way the city currently handles fair share contributions in regards to undergrounding utilities, and seconded Commissioner Livengood's request for a trigger mechanism to assist in the implementation of the fair share contribution process. Ms. Broeren stated that staff is aware of the issues with undergrounding utilities and is reviewing the fair share contribution process.

Duncan Lee, Principal Civil Engineer, gave a brief overview of the water supply assessment for the Beach and Edinger Corridors Specific Plan.

Commissioner Scandura asked if approving the Specific Plan with these water supply impacts would prevent the future approval of projects outside of the Specific Plan area due to limitations on water usage. City Engineer Tony Olmos stated that the water supply assessment does account for potential developments outside of the Specific Plan area and that staff is comfortable that with conservation measures. water supply impacts will be mitigated. He noted that if a large development is proposed that staff can require a new water supply assessment be completed to ascertain the potential impacts. Commissioner Scandura noted that residential developments drive the water supply demand.

Commissioner Delgleize asked if technological advances that could potentially improve water usage were taken into account in the assessment. Mr. Lee stated that it was not but noted that new residences will use less water due to limited landscaping and improved technology.

Commissioner Scandura encouraged his fellow commissioners to review Alternative No. 2 which has reduced residential units.

A-2. GENERAL PLAN CONFORMANCE NO. 09-005 (DAVENPORT ISLAND STREET VACATION) – Hayden Beckman, Planning Aide

Hayden Beckman, Planning Aide, gave a brief overview of the proposed project.

Commissioner Delgleize asked staff to confirm their recommendation to proceed with the vacation. Mr. Beckman stated Public Works had determined that the area is not needed for expansion to Davenport Street and the easement could be vacated. He also said that staff finds the proposed vacation to be consistent with the goals, objectives and policies of the city's General Plan.

Commissioner Speaker asked staff to elaborate on the process if the request is approved. Mr. Beckman stated that the title will change and upon recordation, the property line will be adjusted south to include the easement.

Chair Shier Burnett asked staff if the property owner would then be responsible for property taxes on the area and Mr. Beckman confirmed this.

A-3. ZONING TEXT AMENDMENT NO. 09-009 (HOMELESS SHELTERS/TRANSITIONAL HOUSING) – Hayden Beckman, Planning Aide

Hayden Beckman, Planning Aide, gave a brief overview of the proposed project.

Commissioner Livengood asked staff if the City Attorney's Office staff was involved in this processing this request and Mr. Beckman confirmed this.

Commissioner Speaker asked if the Planning Commission had any alternative recommended actions. Ms. Broeren stated that the options for the emergency shelter standards are outlined in staff report Attachment No. 7.

B. STUDY SESSION ITEMS - NONE

C. PUBLIC COMMENTS

Ed Zschoche, Huntington Beach Tomorrow, spoke in opposition to Item No.SS A-1, stating that significant and unavoidable impacts after mitigation are unacceptable. He stated that additional residential projects would help revitalize the Beach and Edinger Corridors.

D. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS)

Scott Hess, Director of Planning, stated that two Late Communications for Item No. B-1 were received.

E. PLANNING COMMISSION COMMITTEE REPORTS -NONE

F. PLANNING COMMISSION COMMENTS

Commissioner Scandura asked staff to explain the cause for the possible upcoming revocation hearing for Conditional Use Permit No. 08-052/Negative Declaration No. 08-018. Mr. Hess stated that the neighboring residents had filed complaints regarding light spillage and that the project was using more lights than it had been approved for. He stated that Code Enforcement staff has been monitoring the situation and that the applicant, Brethren Christian, had been given notice to reduce the number of lights and to eliminate the glare and spillage onto adjacent homes. Mr. Hess stated that the applicant had violated the conditions of approval and was issued a citation. Commissioner Scandura asked if the revocation hearing would apply to the entire project and Mr. Hess confirmed this. Mr. Hess stated that this would be a non-public hearing item on the December 8, 2009, meeting. Commissioner Scandura asked when the possible revocation hearing would be held and Mr. Hess stated that it would likely be held at the January 26, 2010, meeting.

Vice-Chair Farley asked why the Environmental Impact Report (EIR) for the Beach and Edinger Corridors Specific Plan is scheduled for public hearing separate from the rest of the project. Mary Beth Broeren, Planning Manager, stated that the EIR is complete and ready for Commission action and that action on the EIR can take place independent of any action on the rest of the project. Vice-Chair Farley stated that he would prefer that the EIR be acted on at a date that is nearer to the rest of the project being acted on. Mr. Hess noted that one of the alternative motions for the EIR is to continue the item to the first meeting in January 2010.

Mr. Hess announced that Leonie Mulvihill, Senior Deputy City Attorney, had accepted a position with the City of Newport Beach.

6:45 PM – RECESS FOR DINNER

7:15 P.M. – COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

PLEDGE OF ALLEGIANCE – Led by Vice-Chair Farley

	P	*P*	*P*	*P*	*P*	*P*	*P*
ROLL CALL:	***Speaker,***	***Mantini,***	***Farley,***	***Shier Burnett,***	***Scandura,***	***Livengood,***	***Delgleize***

AGENDA APPROVAL

A MOTION WAS MADE BY SCANDURA, SECONDED BY SPEAKER, TO APPROVE THE PLANNING COMMISSION AGENDA OF NOVEMBER 10, 2009, BY THE FOLLOWING VOTE:

AYES: **Speaker, Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize**
NOES: **None**
ABSTAIN: **None**
ABSENT: **None**

MOTION APPROVED

A. ORAL COMMUNICATIONS - NONE

B. PUBLIC HEARING ITEMS

B-1. APPEAL OF ENVIRONMENTAL ASSESSMENT COMMITTEE DECISION TO PROCESS DRAFT MITIGATED NEGATIVE DECLARATION NO. 08-016 ("THE RIDGE" – 22-UNIT PLANNED UNIT DEVELOPMENT – CONTINUED FROM THE OCTOBER 27, 2009 MEETING WITH THE PUBLIC HEARING OPEN)

Applicant: Hearthside Homes **Appellant:** Planning Commissioner Blair Farley **Request:** Draft Mitigated Negative Declaration No. 08-016 analyzes the potential environmental impacts associated with a request to amend the land use and zoning designations on an existing approximately 5-acre parcel for the subdivision and development of a 22-unit single-family planned unit development (PUD) with a 5,776 square foot common open space area. The project includes the following entitlement requests: General Plan Amendment No. 08-011; Zoning Map Amendment No. 08-007; Local Coastal Program Amendment No. 09-002; Zoning Text Amendment No. 09-008; Tentative Tract Map No. 17294; Coastal Development Permit No. 08-022; and Conditional Use Permit No. 08-046. The Planning Commission will consider the Environmental Assessment Committee's decision to process a Draft Mitigated Negative Declaration (MND) for the proposed project and make a determination as to whether the MND is the appropriate level of environmental review for the project. **Location:** 5-acre site southeast of the intersection of Bolsa Chica Street and Los Patos Avenue (APN: 110-016-35). **Project Planner:** Jennifer Villasenor

STAFF RECOMMENDATION: Motion to: "Continue processing Draft Mitigated Negative Declaration No. 08-016."

The Commission made the following disclosures:

- Commissioner Speaker has attended study session and visited the site.
- Commissioner Mantini has spoken to Hearthside Homes staff, spoken with the Bolsa Chica Land Trust, visited the site and attended the study session.
- Vice Chair Farley has attended the study session, visited the site with the Bolsa Chica Land Trust, and spoken with members of the Bolsa Chica Land Trust.
- Chair Shier Burnett has met with staff, met with the applicant, visited the site with the Bolsa Chica Land Trust, and met with Mark and Julie Bixby.
- Commissioner Scandura has attended the study session, met with staff, spoken with the applicant, met with the Bolsa Chica Land Trust, and visited near the site.
- Commissioner Livengood has attended the study session, met with the applicant, met with the Bolsa Chica Land Trust, met with the Amigos de Bolsa Chica, and walked the site.
- Commissioner Delgleize has visited the site with the Bolsa Chica Land Trust, met with Mark Bixby, met with the applicant, met with the Amigos de Bolsa Chica, met with staff and routinely visits the area surrounding the site.

Jennifer Villasenor, Associate Planner, gave the staff presentation and an overview of the proposed project.

Commissioner Livengood asked staff if the Planning Commission had received the archaeological report referenced in the presentation. Ms. Villasenor stated

that the report had not been attached to the staff report but that copies had been made available upon request.

Commissioner Livengood asked staff if the Planning Commission could make modifications to the Mitigated Negative Development (MND). Ms. Villasenor stated that changes can be made once the MND comes before the Planning Commission for approval. Commissioner Livengood clarified that the Planning Commission was only to approve or deny the Environmental Assessment Committee's (EAC) action and Ms. Villasenor confirmed this.

Commissioner Scandura asked staff if the water on site would drain down the slope towards the Environmentally Sensitive Habitat Area (ESHA) or if it would drain on site. Ms. Villasenor stated that the project would have pervious pavement as well as catch basins which will transport the water to the common open space area which will act as an infiltration field. Commissioner Scandura asked staff for the depth of the groundwater. Ms. Villasenor stated that the historic high is at 20 ft. but is expected to be between 30 and 50 ft. deep.

Ms. Villasenor stated that staff had received three Late Communications on this item including staff's PowerPoint presentation, a letter from the Bolsa Chica Land Trust, and a letter from Julie Bixby.

Commissioner Scandura referenced the California Coastal Commission (CCC) in Attachment No. 4, which referenced the buffer required for the ESHA. He asked staff if part of the Ridge property should be included in that buffer. Ms. Villasenor stated that the ZSO requires a minimum 100 ft. buffer for any ESHA and that it was unknown at this time if the CCC would require a portion of the site to be included in the buffer. She noted that this site would not be considered a foraging area for raptors and that the recent Brightwater project has a smaller buffer than that on the Shea property. Commissioner Scandura asked staff if the buffer on the Shea property was primarily for wildlife foraging or specifically for the raptors. Ms. Broeren stated that the CCC's findings for that buffer reference the raptors specifically and that the size of the buffer is also caused by the EPA wetland required to be restored on the property. Commissioner Scandura asked staff if an additional biological study would be needed to determine the appropriate size of the buffer. Ms. Broeren stated that staff believed the MND and the project as proposed are consistent with past CCC action in the area and therefore a biological assessment is not warranted.

Chair Shier Burnett asked staff to consider providing color scans of any additional reports. She noted that there is some difficulty in reviewing attached graphs and tables in black and white.

Vice-Chair Farley asked staff if a biological study was completed on the site and Ms. Villasenor stated that there was not. Vice-Chair Farley asked staff what biological mitigation measures were being recommended. Ms. Villasenor stated that there are no biological mitigation measures being proposed because none of the project's impacts were deemed potentially significant. Vice-Chair Farley asked how the biological impacts are determined without a study. Ms. Villasenor stated that staff reviewed the Environmental Assessment and determined that a biological study was not warranted as the project exceeds the ZSO's ESHA buffer requirements. Ms. Broeren stated that when the project moves forward it will include a Conditional Use Permit and will need to comply with certain

protocols including the Migratory Bird Treaty Act, which would require pre-construction surveys. She stated that these are not included as mitigation measures because they are standard requirements, but she indicated that these requirements can be identified as a code requirement for the Planning Commission's information.

Chair Shier Burnett noted that the CCC letter in Attachment No. 4 recommends that the Archaeological Assessment be subject to peer review and asked if a peer review is a standard process. Ms. Villasenor stated that because the project would require a General Plan Amendment and Local Coastal Program Amendment, the project would require consultation with the tribes listed on the Native American Heritage Commission's contact list. She stated that staff has already consulted with several of those tribes and provided them with the MND. Chair Shier Burnett clarified that the peer review process was informal and Ms. Villasenor confirmed this.

Chair Shier Burnett stated that the letter from the Amigos de Bolsa Chica in Attachment No. 4 noted that the project received open space credits for streets and driveways and asked staff for clarification on this. Ms. Villasenor stated that the project has a 5776 sq. ft. common open space which is the grassy park space in the middle of the site. Chair Shier Burnett asked Ms. Villasenor if the development was receiving any open space credit for driveways and/or streets and Ms. Villasenor stated that it was not.

THE PUBLIC HEARING WAS OPENED.

Ed Zschoce, Amigos de Bolsa Chica, spoke in support of the appeal, citing concerns with the development of a parcel in an area of cultural significance without an EIR. He expressed concern that the eucalyptus ESHA will not be afforded a sufficient buffer and asked that an EIR be required.

Flossie Horgan, Bolsa Chica Land Trust, (with 4 minutes donated by Michael McMahan) spoke in support of the appeal. Ms. Horgan cited a letter, from the late Dr. Jan Van der Sloot, in support of an EIR due to the significant impacts the project may have on the ESHA, the raptor foraging habitat, and the cultural resources. Ms. Horgan asked the Planning Commission to consider the concerns from the CCC regarding the cultural resources. She stated that the cultural resources discovered in this area have not been properly handled and that the archaeological firm, SRS, has been deemed non-compliant by the CCC. She asked that these non-compliance reports be included in the staff report. Ms. Horgan asked the Planning Commission to follow the CCC's recommendations for a formal peer review and require a full EIR on this site to address the potential cultural resources.

Chair Shier Burnett asked Ms. Horgan if she had reviewed the May 2009 report from SRS and Ms. Horgan stated that she felt the report was inadequate. Chair Shier Burnett asked if Ms. Horgan felt additional excavation was needed. Ms. Horgan stated that she did not believe SRS would acknowledge any archaeological discoveries until after development has commenced.

Mark Bixby, resident, spoke in support of the appeal, citing concerns with water drainage into the AP wetlands. He indicated that this wetland currently receives water runoff from the site and removal of that run off could have a significant

impact on the wetlands. Mr. Bixby questioned staff's assessment that the buffer for the Shea property was due solely to the wetlands on that site. Mr. Bixby stated that the Brightwater comparisons by the applicant and staff are inaccurate as the topography for the two sites differs greatly. He asked the Planning Commission to require an EIR for the site.

Sandra Genis, Bolsa Chica Land Trust, spoke in support of the appeal, citing concerns with the potential biological, cultural, and hydrology, water quality and air quality impacts. She stated that the recommended ESHA buffer is inadequate, citing similar sites with buffers at 300 ft. and over. She stated that the potential impacts of invasive species, domestic pets, and localized air quality were not addressed. She stated that it is the function of an EIR to resolve conflicting claims on potential impacts.

Marinka Horack, Bolsa Chica Land Trust, stated that she had contacted the authors of the studies included in the report and read a letter from one of those authors, Dr. Theodore Cooley, recommending that the site be preserved for its potential cultural resources. She submitted Dr. Cooley's letter for the public record.

Commissioner Scandura asked Ms. Horack to elaborate on her contact with the authors of the studies. Ms. Horack stated that the Bolsa Chica Land Trust had been in contact recently with the some of the authors.

Gerald Chapman, Bolsa Chica Land Trust, spoke in support of the appeal. He spoke briefly on the legal history between the Bolsa Chica Land Trust and Hearthside Homes and expressed concern with the applicant's handling of previous projects. He asked that an EIR be performed to verify the potential impacts to the cultural resources on the site.

Chair Shier Burnett asked Mr. Chapman what would be changed by having an EIR completed. Mr. Chapman stated that the recent technological developments in archaeology would allow for a more accurate assessment of the resources at the site. Chair Shier Burnett asked if that technology in question was developed after the archaeological assessment was completed in 2001 and Mr. Chapman said that it was. Commissioner Scandura stated that the geophysical technology in question has been in use since before the archaeological assessment was completed.

Joe Shaw, resident, spoke in support of the appeal. He questioned how staff could determine that the site did not have biological resources without a biological assessment to determine whether there are resources at the site. He stated that an EIR is needed to determine what the ESHA buffer should be. He stated that, due to the applicant's handling on previous projects on adjacent sites, he did not feel he could trust the archaeological assessments submitted by the applicant and asked for an independent study to be completed.

Julie Bixby, Bolsa Chica Land Trust, spoke in support of the appeal, citing concerns with the potential impacts to the ESHA and the raptors. She stated that development on the site could have potential impacts on the adjacent properties. She stated that the MND did not adequately address the impacts to open park space and noted that the city is deficient in parkland.

Ed Mountford, Hearthside Homes, spoke in opposition to the appeal. He stated that an EIR would not garner any further archaeological information as Hearthside Homes has already provided that information to the Planning Commission. He objected to the previous public speakers' concerns about Hearthside Homes' previous conduct and stated that those concerns are unfounded. Mr. Mountford stated that the ESHA buffer is appropriate given the site's similar topography to the Brightwater property, which has a comparable buffer.

Art Homrighausen, LSA Associates, Inc., stated that the staff recommended ESHA buffer would be adequate and noted that the size of the ESHA buffer on the Shea property is largely an artifact of the wetlands on that site and not the distance from the homes on the property. Mr. Homrighausen stated that raptors have not been seen foraging in the field to the west of the trees. He stated that this buffer is in line with the Department of Fish and Game's recommendation of one half acre of raptor foraging for every acre of development.

Mr. Homrighausen stated that the AP wetland on the property will be regarded and incorporated into the EPA wetland. He noted that studies have shown that there is not enough water to support more than one tenth of an acre of wetland. He stated that any change of drainage on the site would not affect the AP wetland, which will be receiving water from the NTS system on the Shea property.

Commissioner Scandura asked Mr. Homrighausen why the slope is not considered a good foraging area for the raptors. Mr. Homrighausen stated that there is sparse vegetation on the slope and thus little to no wildlife present. Commissioner Scandura stated that the letter from the CCC regarding the buffer on the Shea property indicates that it was prompted by the ESHA, not the wetlands. Mr. Homrighausen stated that the buffer was prompted by several factors, but chiefly by the wetlands. Commissioner Scandura asked for clarification on why the slope was not considered good foraging for raptors as the eastern side is largely an agricultural site. Mr. Homrighausen stated portions of the agricultural field were left fallow and vegetation began to grow there which attracts the food source for the raptors. He stated that the proposed open space on the Shea property will be a superior foraging habitat to what is present.

Commissioner Delgleize asked Mr. Homrighausen what differences there would be in the investigation of the site for an EIR versus an MND. Mr. Homrighausen stated that he was unfamiliar with the documentation that the city used to determine the lack of need for an EIR, but stated that he felt that the same conclusions would be reached by both reports.

Chair Shier Burnett asked Mr. Bixby to elaborate on the raptor foraging that he has witnessed. Mr. Bixby stated that he has observed the raptor foraging on the site for many years and felt it was inaccurate to conclude that the raptors do not forage on the west side of the ESHA. He stated that he has documented raptors perching to view the western slope. Commissioner Scandura asked if the primary foraging occurred to the east. Mr. Bixby stated that the majority of the open land is to the east and so that is the primary foraging site. Commissioner Scandura asked if the fence along the eastern boundary prohibits foraging. Mr. Bixby stated that the fence is not a barrier to foraging.

Commissioner Speaker asked how the applicant would prepare the site differently for an EIR. Mr. Mountford stated that he could not answer without seeing the EIR.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Vice-Chair Farley stated that the Planning Commission is tasked with determining if an MND is adequate for this project as opposed to predicting the results of an EIR. He stated that he felt staff used conjecture to prepare the MND, citing the lack of biological assessment to determine the need for mitigation measures. He stated that thorough investigation should be required due to the requested change in zoning from open space to residential. He stated that he opposed staff's motion due to the lack of compelling evidence for an MND or EIR.

Commissioner Livengood expressed a desire to see written reports corroborating Mr. Homrighausen's statement instead of only a staff report. He noted that there is not a biologist on staff. He noted that there have been extensive archaeological studies on the site in the past but the recent studies do not seem as thorough. He noted that the CCC letter states that the Shea property cannot be included in the determination of mitigation measures and asks that a biological assessment be prepared to address the appropriate setbacks. Commissioner Livengood stated that he felt the MND contradicted the CCC recommendations. He stated that, given that the MND does not include a biological assessment, an EIR is needed.

Commissioner Mantini stated that she felt it was disingenuous to specify that the site is part of an ecosystem but not allow the adjacent properties to be used in the determinations. She stated that the mitigation measures appear to be based on those determined through the EIR on the Hearthside Homes project and did not feel that an EIR on the site would strengthen those measures.

Commissioner Scandura noted that if there is a fair argument that a significant impact could occur, then an EIR is required. He stated that he's generally in agreement with Commissioner Mantini that the mitigation measures in an EIR would mirror those presented in the MND. He cited the CCC letter regarding the ESHA buffer and stated that a biological assessment is needed to determine the size of that buffer. He stated that the lack of a biological assessment presents a fair argument for potential biological impacts and requires an EIR.

Commissioner Speaker asked staff to elaborate on the process if the appeal is denied. Ms. Villasenor stated that staff would continue to process the Draft MND, including responding to public comments and making modifications. She stated that the Draft MND and the project would be brought before the Planning Commission for approval and then forwarded to the City Council and the CCC for approval.

Commissioner Speaker asked staff to explain the process if the appeal is upheld. Ms. Villasenor stated that staff would prepare an RFP (Request for Proposal) for a consultant to prepare an EIR, the consultant would then prepare the EIR, followed by a public comment period, and then the item would be brought before

the Planning Commission for approval and forwarded to the City Council and the CCC.

Commissioner Speaker expressed concern that the additional steps may be excessive. Vice-Chair Farley stated that an impact cannot be mitigated if that impact has not been identified and reiterated the need for a biological assessment. Commissioner Speaker asked staff if a biological assessment could be prepared. Vice-Chair Farley noted that the staff report states that the Planning Commission cannot modify the MND.

Ms. Broeren clarified that the MND does not state that there is no impact to biological resources or the ESHA, but that there are less than significant impacts. She clarified that the Planning Commission's purview is to continue processing the MND or to require an EIR. She also noted that when the project is brought before the Planning Commission for approval, the Planning Commission could decide to require a biological assessment, and that an Environmental Impact Report (EIR) could be triggered at that time.

Ms. Broeren noted that the MND includes significant biological findings from experts and that staff does not believe that any significant impacts exist that have not already been addressed. She also said that the Planning Commission's decision to continue the MND would not close the door on a future biological assessment or EIR.

Commissioner Livengood asked if the Planning Commission decides to continue processing the MND, would the Planning Commission then be able to recommend changes or adjustments. Senior Deputy City Attorney Leonie Mulvihill said yes, if the MND is approved to go forward, then the Planning Commission will have an opportunity to develop findings and recommend changes.

Ms. Mulvihill said that the Planning Commission's purview is to decide if the MND is the appropriate environmental document for this project. If the Planning Commission approves continuation of the MND, then staff continues processing the MND. The Planning Commission may also develop findings or request staff to provide additional information.

Commissioner Scandura asked if the Planning Commission decides to continue processing the MND, but it is determined that a biological assessment is required, could the applicant then stop the MND process. Ms. Mulvihill said no, the city is the lead agency on the MND.

Commissioner Livengood directed the Planning Commission to staff report attachment 1.46 (summary of mitigation measures). He said that he would like to see more extensive measures, such as the detail level usually shown on an EIR.

Commissioner Delgleize said that the Planning Commission's purview does not preclude them from requiring a biological assessment and/or archaeological study at a later date. She also said that she believes an EIR probably won't be warranted.

Chair Shier Burnett noted that the MND experts are provided by the applicant and staff, but the EIR would be researched and produced by biological experts

selected by staff. Ms. Villasenor confirmed that if an EIR is warranted, staff would submit the RFP out to bid. She also said that if an EIR is warranted, then staff will need to determine what technical studies are warranted.

Commissioner Scandura asked if a portion of The Ridge needs to be part of the ESHA buffer. Ms. Villasenor noted that the Planning Commission could change the MND based on the results of the biological assessment or EIR.

A MOTION WAS MADE BY FARLEY, SECONDED BY SHIER BURNETT, TO DIRECT STAFF TO REQUEST AN ENVIRONMENTAL IMPACT REPORT, BY THE FOLLOWING VOTE:

AYES:	**Farley, Shier Burnett, Livengood**
NOES:	**Speaker, Mantini, Scandura, Delgleize**
ABSENT:	**None**
ABSTAIN:	**None**

MOTION FAILED

Director of Planning Scott Hess noted that an option would be for the Planning Commission to approve continuing processing the MND and to direct staff to include a biological assessment.

Vice-Chair Farley asked if the MND would be recirculated based on the results of a biological assessment. Ms. Broeren noted that the city would follow CEQA requirements and would recirculate the MND if warranted by an assessment.

Commissioner Livengood asked who would do the biological assessment. Ms Broeren noted that staff has not decided, but that a potential candidate would be Mr. Homrighausen, due to his biological expertise, familiarity with CEQA requirements and familiarity with the project area.

Vice-Chair Farley said that his reasons for requesting a biological assessment include addressing the ESHA buffer area, concerns with the ground water by the Shea property and cultural resources issues.

Commissioner Livengood asked if the biological assessment would be reviewed and Ms. Villasenor stated that staff would respond to any comments or questions.

Mr. Hess noted for the record that staff will provide the Planning Commission with a biological assessment, but that this will not be listed in the Planning Commission's motion.

A MOTION WAS MADE BY SCANDURA, SECONDED BY DELGLEIZE, TO CONTINUE PROCESSING DRAFT MITIGATED NEGATIVE DECLARATION NO. 08-016, BY THE FOLLOWING VOTE:

AYES:	**Speaker, Mantini, Scandura, Livengood, Delgleize**
NOES:	**Farley, Shier Burnett**
ABSENT:	**None**
ABSTAIN:	**None**

MOTION APPROVED

C. CONSENT CALENDAR - NONE

D. NON-PUBLIC HEARING ITEMS - NONE

E. PLANNING ITEMS

E-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING
Scott Hess, Director of Planning - reported on the items from the previous City Council Meeting.

E-2. CITY COUNCIL ITEMS FOR NEXT MEETING
Scott Hess, Director of Planning – reported on the items for the next City Council Meeting.

E-3. PLANNING COMMISSION ITEMS FOR NEXT MEETING- NONE

F. PLANNING COMMISSION ITEMS

F-1. PLANNING COMMISSION REQUEST ITEMS – NONE

F-2. PLANNING COMMISSION COMMENTS - NONE

ADJOURNMENT: Adjourned at 9:45 PM to the next regularly scheduled meeting of Tuesday, November 25, 2009.

APPROVED BY:

Scott Hess, Secretary

Blair Farley, Chairperson